

HOUSE BILL 2271
By McMillan

AN ACT to amend Title 68, Chapter 215, Part 1,
relative to petroleum underground storage
tanks.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated Subsection 68-215-107(f) is amended by adding the following new subdivision, appropriately designated:

() Requirements for two certification programs, one for installers of and service providers for tank systems and one for owners or operators of tanks; including, but not limited to, the qualifications, the testing procedure, any continuing education requirements, sanctions for failing to comply with the programs, and fees adequate to support the programs.

SECTION 2. Tennessee Code Annotated Subsection 68-215-109 is amended by deleting (a) in its entirety and substituting instead the following:

(a) The board shall levy and collect annual fees from the owners and/or operators of petroleum underground storage tanks containing petroleum substances. Subject to the provisions of this section, the Board is authorized to promulgate rules establishing the following:

- (1) Which petroleum underground storage tanks are subject to annual fees;
- (2) The amount or amounts of such fees, the fee due date, and the basis on which such fees are assessed; and
- (3) A system of incentives to provide for reduced annual tank fees in order to encourage tank owners to use technologies and/or management practices that go beyond the minimum requirements related to release detection and

prevention for tanks and piping. Such technologies or practices must be found by the board to be proven methods of significantly enhancing prevention of releases or reducing the detection timeframe for releases

SECTION 3. Tennessee Code Annotated Subsection 68-215-109 is amended by deleting subsection (b) in its entirety and substituting instead the following as a new subsection (b):

(b) The annual fee shall be :

(1) \$250.00 per tank per year for non-compartmentalized petroleum underground storage tanks;

(2) \$250.00 per tank compartment per year for compartmentalized petroleum underground storage tanks;

provided, however, pursuant to subsection (a), the Board may promulgate rules raising these tank fees up to a maximum level of \$300.00 per tank per year for non-compartmentalized tanks and \$300.00 per tank compartment per year for compartmentalized tanks. In addition, the Board is authorized to promulgate rules lowering these tank fees if the board determines that the condition of the fund warrants it.

and is further amended by adding the following language as a new subsection (c) and redesignating existing subsections accordingly:

(c) The tank fees authorized in this section shall be paid by or on behalf of the petroleum underground storage tank owner or operator. All notices related to such fees that are sent to the tank owner or operator shall also be sent simultaneously to any owner of an interest in the petroleum site on which the tanks are located who has maintained a registration for the tanks pursuant to Section 9 of this Act.

SECTION 4. Tennessee Code Annotated Subsection 68-215-110 is amended by adding the following additional subsection:

() The provisions of T.C.A. §4-3-1015, as amended, shall not apply to the fund; it being the intent of the general assembly that the fund be used solely for the purposes set forth in this part.

SECTION 5. Tennessee Code Annotated Section 68-215-111(e)(1) is amended by deleting it in its entirety and substituting instead the following:

(a) (1) The fund shall provide for cleanup of contamination caused by leaking petroleum underground storage tanks for which the required fees related to petroleum underground storage tanks pursuant to §68-215-109 have been paid prior to the effective date of any termination of fund eligibility due to nonpayment of fees in every year since 1998, or for which the owner has followed the procedure in the rules for reestablishing fund eligibility after it has been lost.

(2) The Board is authorized to promulgate rules that establish the following:

- (i) The amounts of financial responsibility that must be incurred by either the tank owner or operator or the owner of the petroleum site, before they are eligible to receive financial assistance from the fund. Notwithstanding this authority, in no event shall the board set the amount of this required financial responsibility at a level greater than \$30,000 per occurrence.
- (ii) A system of incentives to provide for reduced required financial responsibility amounts in order to encourage tank owners to use technologies or management practices that go beyond the minimum requirements related to release detection and prevention for tanks and piping. In order to qualify for such incentives, such

technologies or management practices must be found by the board to be proven methods of significantly enhancing prevention of releases or reducing the detection timeframe for releases. Rules promulgated pursuant to this subdivision (e)(2)(ii) shall be effective by September 1, 2005.

- (3) The amount of such financial responsibility that must be incurred by either the tank owner or operator or the owner of the petroleum site, before they are eligible to receive financial assistance from the fund for an occurrence reported to the Department on or after July 1, 2005, shall be \$20,000 per occurrence, provided however, that pursuant to subdivision (2)(i), the board may promulgate rules setting the amounts of financial responsibility at greater amounts, up to a maximum of \$30,000 per occurrence. In addition, the Board is authorized to set the required financial responsibility at lower amounts if the board determines that the condition of the fund warrants it.

SECTION 6. Tennessee Code Annotated Subsection 68-215-111 is amended by deleting subdivisions (e)(2)(A) and (B) in their entirety and substituting instead the following:

- (A) The fund shall provide coverage for third party claims involving bodily injury and/or property damage caused by leaking petroleum underground storage tanks for which the required fees related to petroleum underground storage tanks pursuant to §68-215-109 have been paid prior to the effective date of any termination of fund eligibility due to nonpayment of fees in every year since 1998, or for which the owner has followed the procedure in the rules for reestablishing fund eligibility after it has been lost.
- (B) The Board is authorized to promulgate rules that establish the amounts of financial responsibility for third party claims for bodily injury and/or property damage that

must be incurred by either the tank owner or operator or the owner of the petroleum site, before they are eligible to receive expenditures from the fund. Notwithstanding this authority, in no event shall the board set the amount of this required financial responsibility at a level greater than \$30,000 per occurrence.

and is further amended by adding the following as a new subdivision (C) and by redesignating existing subdivision (C) and subsequent subsections accordingly:

(C) The amount of financial responsibility for such third party claims for the tank owner or operator or the owner of any petroleum site for an occurrence reported to the Department on or after July 1, 2005, shall be \$20,000, provided however, that pursuant to subdivision (B), the board may promulgate rules setting the amounts of financial responsibility at greater amounts, up to a maximum of \$30,000 per occurrence.

SECTION 7. Tennessee Code Annotated Section 68-215-111 is amended by adding the following new appropriately designated subsection:

() Notwithstanding any provision of this part, tanks that are owned by the state of Tennessee are not eligible for reimbursement for either clean up costs or third party claims.

SECTION 8. Tennessee Code Annotated Subsection 68-215-120(b) is amended by deleting it in its entirety and substituting instead the following:

Any person who knowingly tampers with or disables a release detection or prevention device associated with an underground storage tank, or who knowingly causes or allows a release of petroleum into the environment in violation of this chapter, rules, regulations or orders of the commissioner or board commits a Class E felony, provided however that if such release results in an expenditure for cleanup by any other person or from the fund, the offense shall be graded for such expenditure in the same manner as theft under Tennessee Code Annotated, §39-14-105 (2) through (5).

SECTION 9. Tennessee Code Annotated, Title 68, Chapter 215, Part 1 is amended by adding the following as a new, appropriately designated section:

() Voluntary Registration of Petroleum Site Owners. Fee. (a) The board shall establish a voluntary registry for persons who own an interest in petroleum sites, including without limitation, owners in fee simple and holders as defined in §68-215-201. The registry shall document the name and address of each registrant, which will be cross-referenced with the petroleum site's facility identification number. Registrants may amend their registrations from time to time to keep the information current. A registrant who has a security interest in a petroleum site shall authorize deletion of its registration within thirty days of satisfaction of the secured debt.

(b) Owners of an interest in petroleum sites wishing to register shall pay an annual fee of \$500.00 per site, or such other higher or lower amount established by the board for this fee based upon the condition of the fund, provided that the fee shall in no event exceed \$750.00 per site. Upon payment of such fee each year, a registrant shall be entitled to simultaneous notice sent to the address on file in the registry of all notifications from the department to the owner / operators of the facility at the site, including without limitation, notices of tank fees, notices of violations, and notices of loss of fund eligibility.

(c) Nothing in this section shall obligate an owner of an interest in a petroleum site to register with the registry or pay the applicable fee or fees; nor shall anything in this chapter entitle the owner of an interest in a petroleum site to the benefits of subsection (b) of this section without registration pursuant to this section and payment of the applicable fee(s).

SECTION 10. Section 10 of Ch. 925 of the Public Acts of 2004 is amended by deleting the last sentence and substituting instead the following:

The Committee shall continue to meet as is needed and shall advise the department on further statutory changes and shall cease to exist on June 30, 2007.

SECTION 11. This Act shall take effect on July 1, 2005, the public welfare requiring it.